IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 976 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAPILABEN BHAIJIBHAI PARMAR - Petitioner(s)
Versus
GOVINDBHAI RAIJIBHAI PARMAR & 4 - Respondent(s)

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Appearance :
MR PRADEEP PATEL for Petitioner(s) : 1,
MR RAJESH K SHAH for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/03/2007

ORAL JUDGMENT

1. In the present petition, the petitioner original plaintiff has challenged an order dated 16th December, 2005 passed by the Presiding Officer,

10th Fast Track Court, Anand in Civil Misc. Appeal No.191/2000.

2. The plaintiff had filed regular Civil Suit No.92/1999 seeking permanent injunction with respect to certain agricultural land situated in village Vaghasi. The plaintiff also filed exh.5 application seeking interim injunction during the pendency of the trial. By order dated 21st June, 2000, trial Court allowed the interim injunction application holding that the plaintiff is in possession of the land in question which should not be disturbed till final disposal of the suit. The respondent no.1 herein preferred an appeal against the said order before the District Court. The District Court allowed the appeal and vacated the interim injunction granted in favour of the plaintiff. The plaintiff has therefore, filed petition challenging the said order.

3. Having heard learned advocates appearing for the parties, I find that the main question to be considered for grant of interim relief at this stage is whether the plaintiff is found to be in lawful possession of the suit land or not. In this regard, I find that though originally the learned trial Judge had held this issue in favour of the plaintiff, prima facie, the District Court was of the opinion that plaintiff had established this aspect. To come to such a

conclusion, the Appellate Court found that the plaintiff had not approached the Court bona fide. It was observed that there was agreement of sale entered into between the relatives of the plaintiff and respondent no.1 herein on 23rd December, 1994, which agreement to say was held back from the Court by the plaintiff. The Appellate Court refused to believe that the plaintiff was not aware about such a transaction. In any case, Court came to the conclusion that the plaintiff has failed to prove her possession. In that view of the matter, District Court was pleased to set aside the order passed by the trial Court. I find that this is a pure question of fact and the Appellate Court has not committed any jurisdictional error.

4. In the case of **Surya Dev Rai v. Ram Chander Rai and others** reported in (2003) Supreme Court Cases 675, the Apex Court considered the question whether after amendment in Section 115 of the Civil Procedure Code by the amending Act 46 of 1999, jurisdiction of High Court under Article 226 and 227 against interlocutory orders passed by the Civil Court would survive or not. The Apex Court though held that jurisdiction of High Court under Article 226 and 227 would not be ousted, observed that such exercise of powers should be exceptional. The Apex Court laid down lay in following terms :

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as here-under-:-

(1) Amendment by Act No. 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or

supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

5. Following the ratio laid down therein, I find that no jurisdictional error made by the District Court.

6. In view of the above observations, petition is dismissed. Rule is discharged. Interim relief is vacated. No costs.

7. Even while dismissing this petition, it is provided that opponent no.1 shall not transfer the possession of the suit properties or

alienate the suit property or create any charge thereof till final disposal of the Civil Suit pending before the trial Court.

(Akil Kureshi,J.)

(raghu)